

# In the United States Circuit Court of Appeals

For the Ninth Circuit

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UNITED STATES OF AMERICA,

*Appellant,*

VS.

ONE McLAUGHLIN TOURING AUTOMOBILE,  
SERIAL NUMBER 514874, ENGINE NUM-  
BER 487067, BRITISH COLUMBIA LI-  
CENSE NUMBER 17893,

*Respondent.*

ANGELO GULARAS,

*Appellee.*

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APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON,  
NORTHERN DIVISION.

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HON. EDW. E. CUSHMAN, *Judge.*

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BRIEF FOR THE APPELLANT.

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THOMAS P. REVELLE,  
United States Attorney.

JOHN A. FRATER,  
Assistant United States Attorney.

*Attorneys for Appellant.*

Office and Postoffice Address: 310 Federal Building,  
Seattle, Washington.

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Filed



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STATEMENT.

By libel of information for forfeiture the United States libelled a McLaughlin automobile manufactured in the Dominion of Canada for the reason that the same was on or about the 2nd day of October, 1920, unlawfully imported into the

United States. The libel specifically described the automobile and alleged that it was merchandise subject to duty and that one Jim Roberts, alias John Doe Rogers, on the date mentioned did fraudulently and knowingly import the same and receive and conceal and transport the same in the United States knowing that the same had been unlawfully imported from a foreign country, and the libel further averred and alleged the seizure by the proper Customs officers and the appraisal of the said automobile in the sum of Seventeen Hundred Dollars (\$1700.00). In due course the appellee appeared and answered the libel of information and set up certain affirmative matters. In his answer the claimant admitted all of the allegations of the libel save and except that the automboile was merchandise and in his affirmative matter alleged that he was the equitable and legal owner of the automobile, that the same was brought into the United States without his knowledge or information and in violation of an agreement which he had with another who was entitled to possession of the said automobile, and further alleged that the automobile was used on or about the date alleged in the libel for the purpose of importing and conveying a quantity of whiskey from Canada into the United States and that the same was laden with whiskey

at the time of seizure. In effect, the claimant averred that he was an innocent party and prayed for the dismissal of the libel. Upon a trial the relief prayed for by the claimant was granted. From this decision the Government prosecutes this appeal.

### ARGUMENT.

The Government's position may be succinctly summarized by stating that an automobile is merchandise and is subject to forfeiture for illegal importation, and the Government's right to subject such merchandise to forfeiture after the same has been illegally imported may not be denied merely because the equitable or legal title to the merchandise happens to be in an individual who is himself guiltless of wrong doing.

Section 2766 R. S. defines merchandise as being

“goods, wares and chattels of every description capable of being imported.”

Merchandise has been defined as goods capable of lawful importation.

*U. S. v. Sisco*, 270 Fed. 958.

Certainly it may not be gainsaid that automobiles have frequently been imported, and in any

event in this case appellee did not raise the question of importation but merely denied that the automobile in question was merchandise. It would further appear that an automobile is merchandise, otherwise Congress would not have enacted the statute which provides for the specific amount of tariff which is due upon automobiles, namely:

38 Stats. at Large, page 125;

Sec. 5291, paragraph 119 Comp. Stats.

An automobile is dutiable merchandise.

*U. S. v. Archer & Co.*, 168 Fed. 242.

Under Section 3100 R. S. it is the duty of a driver of an automobile to report the same together with its contents to the proper Customs officer upon arrival in this country. One bringing an automobile into the United States and failing to do so violates the law.

*Estes v. U. S.*, 227 Fed. 818.

It may be noted that the automobile was brought into the United States without compliance with this statute and it may be further noted and observed that there is not a scintilla of evidence tending to show that it was in fact the purpose of the driver of the automobile to return the same to Canada whence he came. The intent on the part

of the driver to return this automobile to Canada was merely assumed by the Court.

The automobile which the Government seeks to forfeit is and was lawful merchandise and the Government predicates its libel of information for forfeiture upon Section 3082 R. S., which is a straight Customs forfeiture statute. Under the statute just quoted the automobile being merchandise illegally imported was subject to forfeiture.

*Keck v. U. S.*, 172 U. S. 434;

*U. S. v. Chesbrough*, 176 Fed. 778;

*Estes v. U. S.*, 227 Fed. 818;

*U. S. v. 50 Waltham Watch Movements*, 139 Fed. 291;

*U. S. v. Caminata*, 194 Fed. 903;

*U. S. v. 25 Pictures*, 260 Fed. 853.

The claimant herein earnestly insists that the forfeiture should not be had for the reason that he had no knowledge of the illegal importation and that had he been advised of it he would not have permitted the same and that he is innocent of any wrongdoing, and that the operation of Section 3082 R. S. would work an unnecessary and unfair hardship upon an innocent person. Mr. Gularas, the claimant herein, is undoubtedly an honest man and innocent of wrongdoing, and it may be that



he may suffer as a result of the dishonesty of one with whom he contracted or dealt. However, we have the customs and revenue laws of the United States and the revenues of the United States must be maintained.

It has been held that a vehicle illegally imported is liable to forfeiture without regard to the innocence or guilty knowledge of the owner.

*U. S. v. One Black Horse*, 129 Fed. 167;

*U. S. v. One Black Horse*, 147 Fed. 770.

The case last above quoted even holds that a horse and wagon used in the transportation of smuggled merchandise is forfeitable regardless of the fact that the owner and its driver did not have knowledge of the purpose for which it was being used. If the law were not so great opportunities would be presented for collusion between those deciding to smuggle goods into the United States and persons holding dummy or fraudulent conditional sales contracts or mortgages upon the vehicle used in the importation.

It is, therefore, respectfully averred that an automobile is merchandise and that when the same has been illegally imported into the United States it may be forfeited to the United States regardless



of the title or equitable interest of an innocent owner.

Respectfully submitted,

THOMAS P. REVELLE,  
United States Attorney.

JOHN A. FRATER,  
Assistant United States Attorney.  
*Attorneys for Appellant.*

